

MEMORANDUM

To:

John Picciotto, Esq.

R. W. Smith, Jr., Esq. William Taylor, Esq.

From:

Thomas C. Geiser

Robert A. Kelly

Subject:

Agreement and Plan of Merger

Date:

May 2, 2001

We have reviewed the draft Agreement and Plan of Merger dated as of April 19, 2001 (the "Merger Agreement"). We appreciate the various changes that you have made from the initial draft. We are attaching to this memorandum a copy of the current draft Merger Agreement, which we have marked to show our remaining comments.

In order to expedite our discussions regarding the Merger Agreement, we thought it would also be helpful to set forth in some detail what we view as the more significant open issues:

- Non-Solicitation Covenant/Fiduciary Out (Sections 6.14 and 8.1(g)). As you will see, we have renewed our earlier comments with respect to these sections. We continue to believe that in the event a competing proposal arises after we have signed a definitive Merger Agreement, it is reasonable and fair that WellPoint be provided with the documentation regarding the competing proposal and an ability to match the proposal. We believe that it is inconsistent with our respective companies' commitment to a transaction to allow CareFirst to terminate the transaction in the face of a competing bidder without at least affording WellPoint the opportunity to match the competing proposal. In addition, our previous willingness to reduce the proposed termination fee was based upon the assumption that these provisions would be substantially similar to those in the Cerulean transaction.
- CarcFirst Conditions to Close. Given WellPoint's willingness to agree upon a minimum price, WellPoint believes that Sections 7.2 (h) and (i) are not appropriate. Since CareFirst's stockholders will in all instances receive cash, stock and indebtedness in the amount of the minimum value, CareFirst should not have an opportunity to terminate the transaction if WellPoint's stock price declines or if WellPoint experiences a material adverse change.

OCC 010398

- Pre-closing Covenants. WellPoint notes that some, but not all, of WellPoint's requested changes to Section 6.1 (a) and (b) were made in the most recent draft. WellPoint continues to believe that the requested restrictions on CareFirst's operations are reasonable. Likewise, given the relative sizes of the respective companies and the minimum price protection, WellPoint believes that very few restrictions should be placed on WellPoint's continuing operations. Therefore, WellPoint renews its comments with respect to these sections.
- WellPoint's Representations and Warranties. While WellPoint is willing to discuss the
 representations and warranties given in Article V, WellPoint believes that many of the
 representations and warranties requested from WellPoint are inappropriate for a
 significantly larger acquiror and, therefore, renews its comments made with respect to
 the initial draft. This belief is reinforced by our minimum consideration guarantee.
- <u>Definition of Material Contracts.</u> In WellPoint's initial comments, a number of additions were requested to the definition of Material Contracts that were not included in the recent draft. WellPoint continues to believe that the disclosure of these items (e.g., indebtedness) is necessary.
- Closing Condition Based on Litigation. As outlined in the letter of David Colby dated April 19, 2001, WellPoint continues to believe that a condition to closing based upon litigation similar to that provided in WellPoint's Cerulean transaction is appropriate based upon the similarities between the two transactions.
- Termination for Breach and Subsequent Transaction. In the event WellPoint terminates the agreement as a result of a breach of a representation or covenant by CareFirst, a break-up fee should be payable to WellPoint upon CareFirst's entering into another transaction within 12 months of termination. This provision is necessary to protect WellPoint against an attempt to avoid paying the termination fee by forcing a termination for breach and to compensate WellPoint for acting as a "stalking horse."
- <u>Tax Issues/Private Letter Ruling.</u> As you outlined in your memorandum dated April 19, 2001, we look forward to discussing the open tax issues regarding the conversion and related transactions with you.

We look forward to discussing these items and the ones noted in our mark-up at your earliest convenience.

cc: Gary I. Horowitz, Esq.
Thomas LaMacchia, Esq.